

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5863 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT UNIVERSITY

Versus

STATE OF GUJARAT

Appearance:

Mr.Sudhir Nanavati, Senior Counsel for
NANAVATI & NANAVATI for Petitioner
Mr.S.S. Patel, AGP, for Respondent No. 1
MR KM PATEL for Respondent No. 3

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

Date of decision: 22/02/2000

1. Petitioner, Gujarat University, by filing this petition under Articles 226 and 300A of the Constitution of India, has challenged notification bearing No.AM-99-59-M.LAH-1698-1385-GH dated February 11,1999 issued under Section 4 of the Land Acquisition Act, 1896 ('Act' for short), and notification bearing No.AM-99-223-M-LAh-1698-1385-GH dated June 1, 1999 issued under Section 6 of the Act, acquiring land bearing Final Plot no.22, of Ahmedabad Town Planning Scheme No.31, situated at Mouje Vastrapur.

2. As per the case of the petitioner, respondent No.3-Gujarat Mineral Development Corporation, is a Company owned and controlled by the Government and had constructed a building on Survey No.199/1-2-3 of village Vastrapur, Taluka City, District Ahmedabad. As the said building was not having approach road, they moved the Government for acquiring part of land of the petitioner bearing Final Plot No.22 of Town Planing Scheme No.31 of Revenue Village of Vastrapur, admeasuring approximately 1139 sq.mtrs. Notification under Section 4(1) of the Act was published on February 11, 1999. The State Government having satisfied that the land under acquisition was needed for public purpose, made declaration under Section 6 of the Act on June 1, 1999, which was published in the gazette on the same day. When the petitioner came to know that, without proper publication of notification under Section 4(1) of the Act, the State Government had acquired land belonging to the petitioner, they filed the present petition challenging the notifications as stated hereinabove.

3. It is averred by the petitioner that notification under Section 4 of the Act was published in newspaper, Western Times, which was not having wide circulation and further that the notification under Section 4(1) of the Act was published in the said newspaper on Sunday, which was a public holiday when the University Offices were closed and, therefore, the petitioner could not know about issuance of Section 4 notification and was not able to file its objection under Section 5-A of the Act against the proposed acquisition. It is further averred by the petitioner that the respondent had by colourable exercise of powers sought to acquire land belonged to the petitioner and the respondents have with mala fide intention had tried to grab the valuable property of the petitioner which is meant for educational activities and sports activities of the University. It was further averred that intention of the Legislature for providing

publication in the newspaper is to make known to the public at large about the proposed acquisition. It was further averred that, in the present case, there was no publication of fresh notification under Section 4(1) of the Act dated February 11, 1999, in daily newspaper of English language and, therefore, mandatory requirements of law were not followed and therefore notification under Section 4 of the Act is required to be struck down having no legal effect of any nature whatsoever. It is further averred by the petitioner that Section 6 notification was also consequentially not published in a daily newspaper of vernacular language having wide circulation in the locality and, therefore, Section 6 declaration and notification requires to be quashed and set aside. On these grounds, the petitioner prayed to issue appropriate writ of mandamus or any other appropriate writ or order or direction quashing and setting aside notification bearing No.AM-99-59-M.LAH-1698-1385-GH dated February 11, 1999 issued under Section 4 of the Act and notification bearing No.AM-99-223-M-LAh-1698-1385GH dated June 1, 1999 issued under Section 6 of the Act.

4. Affidavit-in-reply is filed by the General Manager (Administration) of respondent no.3, Gujarat Mineral Development Corporation Limited, inter alia, contending that land bearing No.199/1-2-3 of village Vastrapur, Taluka: City, District Ahmedabad, admeasuring 9295 sq.mtrs originally belonged to the Sarangpur Cotton Manufacturing Company Limited having its textile mill at Ahmedabad. When the textile mill became sick and was taken over by the Gujarat State Textile Corporation under the provisions of the Gujarat Closed Textile Undertakings (Nationalisation) Act, 1986, the said Textile Corporation desired to dispose of the land to raise the funds and since respondent No.3-Corporation required land for construction of its Corporate Office at Ahmedabad, the said land came to be purchased by respondent No.3 on February 26, 1993 for total value of Rs.1,84,16,000/- and the Corporation had already undertaken construction of eight storeyed building for its Corporate Office by spending Rs.6 crores till the date of filing of the petition. It was further submitted that as there was no approach road to the land, respondent No.3 approached the Government to acquire land admeasuring 1139 sq.mtrs belonging to the petitioner. It is submitted that the State Government, after scrutinising the proposal, was satisfied that the land is required for the benefit of respondent, which was needed for the public purpose, and, therefore, notification under Section 4(1) of the Act was published in the government gazette on February 11, 1999. The said notification was published both in Gujarati as

well as English newspapers having wide circulation. It is stated that notification was published in Gujarati daily newspaper, Western Times, on March 7, 1999, and in English daily newspaper, Indian Express, on March 8, 1999. It is further averred that as 'no objection' was received by the Land Acquisition Officer under Section 5-A of the Act, and as the period prescribed under Section 5-A of the Act had expired, declaration under Section 6 of the Act was made on June 1, 1999 which was published in the government gazette on the same day. It is further averred in the affidavit in reply that said notification under Section 6 was published in Gujarati daily, Prabhat, on June 22, 1999 and in English daily, Indian Express, on June 23, 1999. It is denied that Western Times is having negligible circulation, but, on the contrary, it is having circulation of more than 64000 copies. It is stated that the notification under Section 6 of the Act was published in daily newspapers, Western Times. Indian Express, and Prabhat. It is stated that newspaper, Prabhat, is having circulation of more than 45000 copies per day. On the above assertions made in the affidavit in reply filed by respondent No.3, it is submitted that there was proper publication of notifications issued under Sections 4 and 6 of the Act and, therefore, the petition deserves to be dismissed.

5 Respondent no.3 has further stated that the allegation that the land in question has been acquired mala fide and in colourable exercise of power is baseless as the State Government was satisfied as regards need of land for public purpose for the benefit of GMDC, which is a government company, as defined under the Act. It is contended that the acquired lands is a small strip of land of 613 ft. length and 20 ft. width admeasuring only 1139 sq.mtrs, and, by the help of acquired land, short route would be provided as approach road to the GMDC connecting with Ring Road. It is stated that the GMDC needed approach road to connect Ring Road and there was no mala fide or abuse of authority or colourable exercise of powers behind acquisition of land in question. It is further stated by respondent No.3 that its officers had called on the Vice Chancellor and other Authorities of the petitioner to have negotiation. However, the petitioner, in consideration for sparing small parcel of land, was asking to provide fencing of entire University Campus running into 12 kms. length. It is stressed that the petitioner, by letter dated July 15, 1997, had initially conveyed that the request of the Corporation for providing approach road can be considered if respondent No.3 considers providing fencing of the entire land of the University having periphery of 12 kms.

It is stated that the State Government was satisfied that respondent No.3 needed acquired land for approach road which was a public purpose, and once the State Government was satisfied about need of respondent No.3, no petition challenging acquisition on the ground of mala fide or colourable exercise of power is maintainable. It is further contended by respondent No.3 that the Corporation had spent about Rs.8 crores in purchasing land and construction of the building and having spent such a huge amount, acquisition for approach road cannot be quashed. At the end, it is submitted that the Authorities had strictly complied with the provisions of Section 4 of the Act and, therefore, the petition deserves to be dismissed.

6. Respondent No.2, Additional Special Land Acquisition Officer, by filing affidavit in reply has, inter alia, contended that the Gujarat Mineral Development Corporation is one of the enterprises of State of Gujarat and is a government undertaking company for whose benefit land in question has been acquired. It is stated that, earlier, acquiring body had requested for publishing notification under the emergency clause, and, therefore, after preparing notification, it was sent to the State Government, but the State Government did not agree for issuing notification of emergency clause, and, therefore, Section 4 notification was issued on February 11, 1999 without applying emergency clause. It is submitted that, for publishing Section 4 notification in the newspapers, notification was sent to the Director of Information who published notification in newspapers according to the guidelines issued by the State Government. It is further submitted that notification was duly published in accordance with the Act and more particularly keeping in mind the provisions of Section 4 of the Act. It is stated that, after publication of Section 4 notification, no objection was filed by the petitioner within prescribed time and, thereafter, the State Government having been satisfied that the land in question was required by respondent No.3 for public purpose has made declaration under Section 6 of the Act which was duly published in the official gazette and also in the daily newspapers. It is stated in the affidavit in reply filed by respondent No.2 that, as all the mandatory provisions of the Act have been strictly complied with, the petition requires to be dismissed.

7. Heard learned Senior Advocate, Mr. S.I. Nanavati for the petitioner, learned advocate Mr. K.M. Patel for respondent No.3-Gujarat Mineral Development Corporation, and learned Government Pleader, Mr.P.G.

Desai for the respondents Nos. 1 and 2.

8. Learned Senior Advocate for the petitioner, Mr.

S.I. Nanavati, has vehemently submitted that by not publishing notification in the daily newspapers having wide circulation, the petitioner was deprived of filing objection under Section 5-A of the Act and, therefore, notification issued under Section 4 of the Act deserves to be quashed. Learned Senior Advocate has further submitted that Section 4 notification was published in daily newspaper, Western Times, on March 7, 1999, which was a Sunday, and offices of the petitioner-University were closed and, therefore, it had not come to the knowledge of the petitioner that such a notification under Section 4(1) of the Act was issued to acquire land in question. The above submissions of learned Senior Advocate for the petitioner deserve to be rejected. The petitioner has not come out with a case that the office of the University was not subscribing daily newspaper, Western Times. Even otherwise, Section 4(1) notification was published in daily newspaper, Indian Express on Monday, March 8, 1999. The said notification was also placed in chora of Vastrapur Gram Panchayat. In view of these facts, it is not conceivable to believe that the petitioner had no knowledge about issuance of Section 4 notification. From the record, it is difficult to conceive that with mala fide intention and with intention to keep the petitioner in dark about issuance of notification under Section 4(1) of the Act, the same was published in the daily newspaper, Western Times. Moreover, the said notification was published in daily newspaper, Indian Express, having wide circulation. Notification, after publication in the official gazette, was sent to the Director of Information for publication in the newspapers and the Director of Information in turn by following guidelines issued by the State Government had sent it for publication in the newspaper by rotation. Therefore, it cannot be said that with mala fide intention, notification was published in daily newspaper, Western Times, on Sunday, just to deprive the petitioner of its valuable right of filing objection against proposed acquisition in pursuance of notification under Section 4 of the Act. There is no manner of doubt that notification was published in the official gazette and in the daily newspapers also and if the petitioner had intended to file objection under Section 5A of the Act, it could have done so.

9. The assertion made by the petitioner in paragraph

3.3 of the memo of petition that it came to know about acquisition of land only on July 26, 1999, when Vice

Chancellor of the University received notice addressed by respondent No.1 to lodge claim of compensation for the acquisition of land, is, in our opinion, inconceivable. Notification under Section 4 of the Act was duly published in daily newspaper, Indian Express, which is having wide circulation. Moreover, substance of notification was also placed in chora of village Vastrapur and it is difficult to believe that the petitioner had not come to know about issuance of notification under Section 4(1) of the Act.

10. The submission of learned Senior Advocate for the petitioner that there was no publication of notification issued under Section 6 of the Act in the daily newspapers having wide circulation, also deserves to be rejected. Notification under Section 6 of the Act was duly published in the official gazette as well as in the daily newspapers, Indian Express and Prabhat. Affidavit in reply indicates that both the newspapers are having wide circulation. It is difficult to believe that an educational institution, like petitioner-University, is not subscribing the newspaper Indian Express. Notification under Section 6 of the Act was published in English as well as Gujarati newspapers having wide circulation. Notification under Section 6 of the Act was also published in Gujarati daily newspaper, Prabhat, on June 22, 1999, which is having wide circulation. Learned Senior Advocate for the petitioner has placed reliance on the decision in the case of Rajmal vs. State of Rajasthan, reported in AIR 1997 Rajasthan 68, in support of his contention that notification under Section 4(1) of the Act should be published in newspaper having circulation in the locality within the meaning of Section 4(1) of the Act. Learned Senior Counsel for the petitioner, by relying upon observation of learned single Judge of Rajasthan High Court in paragraph 5 of the decision, has strenuously urged that notification should be published in a daily newspaper having wide circulation in the locality. Learned Senior Advocate further submits that, if the notification is published in a newspaper having no circulation at all in the locality or meagre circulation, then it should be said to be 'no circulation' and, therefore, there was breach of mandatory provision of Section 4 of the Act, and acquisition proceedings should be quashed. In our opinion, as observed earlier, respondent No.2 has scrupulously followed provisions as contained in Section 4(1) of the Act by publishing notification under Section 4(1) of the Act in the official gazette as well as in daily newspapers - in Gujarati as well as English language - having wide circulation in the locality. In

our opinion, decision in the case of Rajmal (supra) relied upon by learned Senior Advocate for the petitioner will not be any help to the petitioner.

11. Learned Senior Advocate for the petitioner has also contended that acquisition of land in question for benefit of respondent No.3-Corporation was not 'public purpose'. In our opinion, submission of learned counsel for the petitioner does not deserve any merit and requires to be rejected. The State Government having been satisfied of the need of respondent No.3, which is a government company, has come to the conclusion that land in question was needed for approach road and, ultimately, had issued declaration under Section 6 of the Act after satisfying itself that land in question was needed for public purpose. After issuance of notification under Section 6 of the Act, it is not open to the petitioner to contend that land was not needed for public purpose and it was acquired as a result of mala fide and colourable exercise of power. The factual scenario emerging from the record of the petition indicates that respondent No.3 had constructed building on its own land after spending more than Rs.8 crores and because there being no approach road it requested the petitioners through negotiation to give land in question, but as negotiation failed, respondent No.3 approached State Government for acquisition of land. Admittedly, respondent No.3 is a government company and there being no approach road, land in question had to be acquired under the provisions of the Act. Once notification under Section 6 of the Act is issued, it is not open to the petitioner to challenge that there was no public purpose and acquisition was made as a result of mala fide and colourable exercise of power. It is settled legal principle that, once the Government decides bona fide of need and necessity for acquiring land, unless action taken by the Government was fraudulent, decision taken by the Government to acquire land is conclusive one (See: AIR 1970 SUPREME COURT 984: Ratilal Shankarabhai and others vs. State of Gujarat; AIR 1963 Supreme Court 151; AIR 1971 Supreme Court 1033: Satish Kapur vs. State;) The need and necessity for acquiring land in question was taken into consideration by the Government and when Section 6 notification has also been made after the Government having been satisfied about public purpose behind acquisition, and, therefore, it is not open to the petitioner to contend that acquisition was mala fide and colourable exercise of power.

12. In Scindia Employees' Union vs. State of Maharashtra and others, reported in (1996) 10 Supreme

Court Cases 150, the Supreme Court ruled that publication of declaration under Section 6 accords conclusiveness to the acquisition. It is for the appropriate Government to take decision whether particular land is needed for public purpose or not and the Court cannot substitute its opinion on public purpose to that of the appropriate Government. Therefore, once declaration under Section 6 of the Act is made, it is not open to the petitioners to challenge it on the ground that acquisition is tainted with mala fide and it is made by colourable exercise of power.

13. These were the only submissions made by the learned Senior Advocate for the petitioner.

14. As a result of foregoing reasons, we do not find any substance in any of the submissions advanced by learned Senior Advocate for the petitioner and the petition deserves to be rejected. Rule is discharged with no order as to costs.

(swamy)